IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

O R D E R

Emerald Construction Co. Pvt. Ltd. **VS.** State of Raj. & Ors.

D.B. CIVIL WRIT PETITION NO.7/1995
Under Article 226 of the Constitution
of the India.

Date of order : 3rd July, 2007

PRESENT

HON'BLE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE MANAK LALL MOHTA

Mr. J.P. Joshi for the petitioner.
Mr. L.R. Upadhyay, Dy. Government Advocate.

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BY THE COURT: (PER HON'BLE ACTG. C.J. RAJESH BALIA)

The petition is to impugn the demand raised by the respondent Municipal Council against the petitioners under Section 173 A of the Rajasthan Municipalities Act, 1959 as it stood at the relevant time. The demand was raised as conversion charges for change in the land use.

The validity of Section 173 A of the Act of

1959 has also been assailed but that question is not required to be looked into in this petition as the petitioner on admitted facts and the documents relied on by the respondents is entitled to relief.

The land in question according to the averments made in the petition was a part of land allotted by the erstwhile Mewar State long time in past and the petitioner was transferee of a parcel of the land governed by the original patta issued in favour of the ancestors of the transferees. The petitioner had acquired the land in question through a chain of intermediary transfers of the land and the land itself has been transferred to large number of different persons.

Answer to the question raised about the validity of demand as the conversion charges under Section 173 A of the Municipalities Act, 1959 depends on the fact whether the title under which the land was held, contained any restriction as to use of the land by the holder or it was a free hold land with no restriction to its user. Section 173 A of the Municipalities Act

before its amendment envisaged that where a land held by a person under any grant is used for the purpose other than for which the grant was made, he was required to pay conversion charges at the rate or rates that may be specified from time to time by the Government in this regard.

The contention of the learned counsel for the petitioners is that unless there is a restriction about the user of the land by the holders of the land in terms of the grant and the land is sought to be put to use other than for which it has been granted, no conversion charges could be demanded under Section 173 A of the Act of 1959.

The respondents have stated that the transfer deed has not been produced before it but has been placed on record as Annexure R 3/1 stated to be the original patta issued by Mewar State in 1935. The photocopy of the original patta as well as its translation in Hindi has been produced by the respondent No.3. The translation has been produced in pursuance of the

directions issued by this Court vide order dated 28th March, 2003. From the perusal of the Hindi translation of document produced by respondents as Annex.R 3/1, it is apparent that no restriction was put on the holder of the land under the grant about its use.

The question was examined by this Court in Municipal Corporation Jodhpur & Anr. Vs. Raj Kumar & Anr RLW 2000 (3) (Raj.) 1682. The Division Bench of this Court held that if the sale or allotment by the Municipalities or State Government was without any restrictive clause for user or for specified purpose, no question of charging conversion charges under the Rajasthan Municipalities Act can arise. It was also clarified in that case that it is the right of using the land for any purpose is attached with the land and right to unrestrictive use vest in purchase of the land also. In such event no question of demanding conversion charges from the purchaser of land can arise. The Court had said:-

"The provisions of Section 173-A of the

Rajasthan Municipalities act must be read with the provisions contained in Section 8 and Section 55(6)(a) of the Transfer of Property Act. Where a person has purchased the plot of land from private citizen who was the owner of the land and by such purchase of land all the rights of the former owner have been transferred to the purchaser, the provisions of Section 8 and 55(6) (a) of the Transfer of Property Act would apply and the purchaser would be entitled to all the rights referred in Section 8 and 55(6)(a) of the Transfer of Property Act. Unless the rights, in the immovable property, are acquired by the State Government or by the Municipality, as the case may be, the purchaser cannot be deprived of the rights which are available to him under Section 8 and Section 55(6) of the Transfer of Property Act. Section 173-A of the Rajasthan Municipalities aCt cannot be interpreted in such a manner as to deprive the owners of immovable properties situated within Municipal area of the rights which are available to them under Section 8 and Section 55(6) of the Transfer of Property Act. Even in the case of land sold or allotted by the State Government or the Municipality, the provisions of Section 8 and Section 55(6) of the Transfer of Property Act are applicable

> and, therefore, if the sale or allotment of land by the Municipality or the State Government was without any condition, restraining the purchaser from using the land for a specified purpose only, no question of demanding any conversion charges under Section 173-A of the Rajasthan Municipalities Act would arise if the purchaser wants to change the use of the land."

This judgment, as we are informed, has been affirmed by Supreme Court. The same view has been expressed by the Division Bench in another case.

Looking to the facts of the present case, it is clear that the land in question was a grant by erstwhile Mewar State without any restriction as to its user by himself or his transferee. The transferees of that land from the original holders acquired the same rights as the original holders had and for the user of said land or any part thereof by any party claiming under the original grantee or through him no conversion charge under Section 173 A, as it was in force at the relevant time could be demanded when permission was sought and

construction was raised in pursuance thereof.

Accordingly, this petition succeeds. The demand raised by the respondent as conversion charges for raising construction over the land in question in which the petitioner had absolute right to use in any manner, the respondents had no authority to demand conversion charges when the land use was changed from the current use to different use. The impugned demand raised in this regard is quashed. There shall be no order as to costs.

[MANAK LALL MOHTA], J. [RAJESH BALIA],Actg. C.J.

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